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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Cr. No. 1-19-CR-00099 DJK-KJM

Plaintiff,

DELIA FABRO-MISKE'S MOTION
IN LIMINE NO. 15 RE: CELL
PHONE DOWNLOADS

vs.

DELIA FABRO-MISKE (12),

Defendant.

Delia Fabro-Miske, by her counsel, Marcia A. Morrissey and Donovan A. Odo, move in limine that cell phone downloads be precluded (1) absent identification of relevance; (2) on hearsay grounds; because such evidence denies the accused the right to confront and cross-examine witnesses; and (3) because the

contents of cell phones have not been designated as co-conspirator statements.

The cell phone downloads and reports thereof contain thousands of phone calls, emails, text messages, photographs, internet history and videos. Counsel are unable to draft appropriate motions regarding such evidence unless the government identifies the cell phones it intends to introduce and the specific content of any such cell phone. In addition, we seek notice as to any cell phone content that the government contends constitute statements of co-conspirators, so the the admissibility of such evidence may be determined by this Court. Fed. R. Evid. 801(d)(2)(E). Some cell phones may contain references to unnoticed “other crimes,” “bad acts” evidence, e.g., the use of marijuana. Fed. R. Evid. 404(b). Further, the majority of evidence from cell phones is of no apparent relevance, in that it does not tend to prove any crime charged in the Third Superseding Indictment. Fed. R. Evid. 403; *see also United States v. Curtin*, 489 F. 3d 935, 964 (9th Cir. 2007).

While some cell phone information, such as texting or calling at times relevant to the charged offenses, may be relevant, the vast majority of it is not.

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The first step in resolving this issue is for the government to designate specific cell phone evidence that it intends to use in its case-in-chief, so that any legal issues presented by such evidence can be identified and raised by defense counsel and ultimately resolved by the Court before trial.

Dated: November 13, 2023

Respectfully submitted,

/s/ Marcia A. Morrissey
MARCIA A. MORRISSEY

/s/ Donovan A. Odo
DONOVAN A. ODO

Attorneys for Defendant
DELIA FABRO-MISKE

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was electronically served through CM/ECF on the following on November 13, 2023:

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DATED: November 13, 2023.

/s/ Marcia A. Morrissey
Marcia A. Morrissey

Attorney for Defendant
Delia Fabro-Miske